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(c) The restrictions in § 182.6(a)(1)(iii) shall apply to all actions of DoD personnel worldwide.

(d) Exceptions, based on compelling and extraordinary circumstances, may be granted to the restrictions in § 182.6(a)(1)(iii) for assistance to be provided outside the United States; only the Secretary of Defense or Deputy Secretary of Defense may grant such exceptions.

(e) Requests for law enforcement support shall be evaluated using the criteria in 32 CFR part 185.

§ 182.5 Responsibilities.

(a) The Under Secretary of Defense for Policy (USD(P)) shall establish DoD policy governing defense support of civilian law enforcement agencies and facilitate the coordination of that policy with Federal departments and agencies; State, local, and tribal agencies; and the DoD Components, as appropriate.

(b) The Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA)), under the authority, direction, and control of the USD(P) and in accordance with DoD Directive 5111.13,³ “Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA)),” shall develop, coordinate, recommend, and supervise the implementation of policy for defense support of civilian law enforcement agencies and defense support of civil authorities (DSCA), including law enforcement support activities. In executing this responsibility for DoD law enforcement support activities, the ASD(HD&ASA) shall:

(1) Develop procedures and issue appropriate direction as necessary for defense support of civilian law enforcement agencies in coordination with the General Counsel of the Department of Defense, and in consultation with the Attorney General of the United States (Attorney General), as appropriate, and in accordance with responsibilities assigned in 32 CFR part 185 and DoD Directive 5111.13. This includes tasking the DoD Components to plan for and to commit DoD resources in response to

requests from civil authorities for CDO (such a commitment of DoD resources for CDO must be authorized by the President of the United States and directed by the Secretary of Defense).

(2) Serve as the principal point of contact between the Department of Defense and the Department of Justice for planning and executing CDO.

(3) Coordinate with civilian law enforcement agencies on policies to further DoD cooperation with civilian law enforcement agencies.

(4) Provide guidance for the use of Reserve Component personnel in support of civilian law enforcement agencies, in coordination with the Secretaries of the Military Departments and the Assistant Secretary of Defense for Reserve Affairs (ASD(RA)), and with the Chief, National Guard Bureau (NGB), as appropriate. This will include guidance for use by approving authorities in evaluating the effect on military preparedness of requests for civilian law enforcement assistance that may involve use of the Reserve Components.

(5) Assist in the development of policy regulating plans, procedures, and requirements of the DoD Components with authority over defense resources that may be employed to provide law enforcement support.

(6) Inform the ASD(RA) of all requests for assistance by civilian law enforcement agencies that may be met using Reserve Component personnel and resources.

(i) Inform the Chief, NGB, of all requests for assistance by civilian law enforcement agencies that may be met using NG personnel.

(ii) Coordinate with the ASD(RA) and others as appropriate regarding duty status policies (e.g., performance of duty pursuant to 10 U.S.C. 331–334 and 371–382).

(7) Coordinate with the Chairman of the Joint Chiefs of Staff (CJCS) in advance of the commitment of any Federal military forces.

(8) Coordinate with the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense, when providing assistance to civilian law enforcement agencies to ensure an appropriate funding approach in accordance with § 182.6(g).

³ Available at <http://www.dtic.mil/whs/directives/corresp/pdf/511113p.pdf>.

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(9) In coordination with the Under Secretary of Defense for Intelligence (USD(I)), the CJCS, the Commanders of the Combatant Commands with DSCA responsibilities, and the Secretaries of the Military Departments, establish protocols and guidance for ensuring that the needs of civilian law enforcement officials for information are taken into account in the planning and execution of military training and operations.

(10) Ensure, in coordination with the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (ASD(SO/LIC)), the proper use of electronic counter-measures (ECM) by or in support of DoD explosive ordnance disposal (EOD) personnel when supporting civil authorities is addressed in interagency agreements and contingency plans.

(c) The USD(I) shall:

(1) Establish DoD processes and procedures to provide support to civilian law enforcement officials with Defense Intelligence Component resources in accordance with appropriate statutory authorities and DoD and Intelligence Community policy.

(2) Facilitate consultation on DoD policy regarding intelligence support of law enforcement officials, with appropriate Federal departments and agencies; State, local, and tribal agencies; and the DoD Components.

(d) The IG, DoD, shall issue guidance on cooperation with civilian law enforcement officials with respect to audits and investigations conducted, supervised, monitored, or initiated pursuant to DoD Directive 5106.01,⁴ “Inspector General of the Department of Defense (IG DoD).”

(e) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) shall monitor and oversee the development of integrated training capabilities related to defense support to civilian law enforcement officials and the integration of these training capabilities into exercises and training to build, sustain, and assess readiness

in accordance with DoD Directive 1322.18,⁵ “Military Training.”

(f) The ASD(RA), under the authority, direction, and control of the USD(P&R), shall assist the ASD(HD&ASA) in the development of guidance for use by approving authorities in evaluating the effect on military preparedness of requests for civilian law enforcement assistance that may involve use of the Reserve Components.

(g) The Heads of the DoD Components shall:

(1) Strictly comply with and disseminate throughout their Components the guidance issued by the ASD(HD&ASA) pursuant to paragraph (b) of this section.

(2) Identify appropriate resources for civilian law enforcement support that are consistent with law and DoD policy to carry out the intent of this part.

(3) Review training and operational programs to determine how and where assistance can best be provided to civilian law enforcement officials, consistent with the responsibilities established in this section. This review should include recommendations regarding activities for which reimbursement could be waived in accordance with § 182.6(g)(2).

(4) Issue implementing guidance, in coordination with the ASD(HD&ASA), incorporating the procedures in this part, including:

(i) Procedures for prompt transfer of relevant information to law enforcement agencies.

(ii) Procedures for establishing local contact points in subordinate commands for purposes of coordination with Federal, State, tribal, and local civilian law enforcement officials.

(iii) Guidelines for evaluating requests for assistance in terms of effect on military readiness of the United States.

(5) Inform the CJCS of all requests requiring approval of the ASD(HD&ASA) or the Secretary of Defense, in accordance with this part.

⁴ Available at <http://www.dtic.mil/whs/directives/corres/pdf/510601p.pdf>.

⁵ Available at <http://www.dtic.mil/whs/directives/corres/pdf/132218p.pdf>.

(h) The Secretaries of the Military Departments, in addition to the responsibilities in paragraph (g) of this section, shall:

(1) Provide resources to the DoD Components, consistent with DoD policies, goals, and objectives, to carry out the purpose of this part.

(2) Coordinate with the Commanders of the Combatant Commands with DSCA responsibilities to ensure that the needs of civilian law enforcement officials for information are taken into account in the planning and execution of military training and operations.

(i) The CJCS, in addition to the responsibilities in paragraph (g) of this section, shall:

(1) Assist the ASD(HD&ASA) in developing recommendations for responding to requests for CDO and developing interagency policies on CDO.

(2) Develop processes to evaluate the effect of requests for civilian law enforcement assistance on military preparedness of the United States.

(3) Advise the Secretary of Defense, ASD(HD&ASA), or Heads of the DoD Components, upon request, on the effect on military preparedness of the United States of any request for defense assistance with respect to CDO.

(j) The Commanders of the Combatant Commands with DSCA responsibilities, through the CJCS, shall, in addition to the responsibilities in paragraph (g) of this section:

(1) Provide support of civilian law enforcement authorities as directed by the Secretary of Defense.

(2) Implement the provisions of this part in appropriate training and exercises.

(3) When designated as a supported commander, coordinate with supporting DoD Components all reimbursement for assistance provided under the provisions of this part.

(4) When designated as a supported commander, coordinate with the CJCS, the ASD(HD&ASA), and the ASD(SO/LIC) (for the employment of special operations forces) for all military preparations and operations, including the employment of Federal military forces as requested by the Attorney General and approved by the Secretary of Defense, as a result of any domestic emergency, including a terrorist incident,

civil disturbance, or a natural disaster. Commanders shall observe all such law enforcement policies as the Attorney General may determine appropriate.

(5) For a terrorist incident having the potential for a request for military assistance by mutual agreement of DoD and the Federal Bureau of Investigation (FBI), designated Combatant Commanders may dispatch observers to the incident site to evaluate the situation. Any dispatch of DoD counterterrorism forces must be specifically authorized by the Secretary of Defense through the CJCS.

(6) Coordinate with the Secretaries of the Military Departments to ensure that the needs of civilian law enforcement officials for information are taken into account in the planning and execution of military training and operations.

(k) The Commanders of U.S. Northern Command (USNORTHCOM), U.S. Pacific Command (USPACOM), and U.S. Special Operations Command (USSOCOM), through the CJCS and in addition to the responsibilities in paragraphs (g) and (j) of this section, shall:

(1) Serve as the DoD planning agents for support of civilian law enforcement activities, including CDO, following the guidance of the ASD(HD&ASA) and in coordination with the CJCS.

(2) Lead planning activities for support of civilian law enforcement activities, including CDO, of the DoD Components in accordance with § 182.6(b)(3). Serve as the DoD financial managers for their respective CDO operations in accordance with § 182.6(g)(2).

(1) The Chief, NGB, shall:

(1) Implement the procedures in this part.

(2) Assist the ASD(HD&ASA) in accordance with DoD Directive 5105.77,⁶ “National Guard Bureau (NGB),” in developing policy guidance regarding the use of NG personnel for DoD support of civilian law enforcement agencies.

(3) Assist the ASD(HD&ASA) in the development of policy guidance for use by approving authorities in evaluating the effect on military preparedness if

⁶ Available at <http://www.dtic.mil/whs/directives/corres/pdf/510577p.pdf>.

NG personnel are used to fulfill requests for civilian law enforcement assistance.

(4) Serve as an advisor to the Commanders of the Combatant Commands on NG matters pertaining to Combatant Command responsibilities under this part, and support planning and coordination for such activities as requested by the CJCS or the Commanders of other Combatant Commands.

(5) On all matters pertaining to the NG, serve as the channel of communications between: the Secretary of Defense, the CJCS, and the DoD Components (other than the Department of the Army and the Department of the Air Force); and the States. The Chief, NGB, shall keep the Secretaries of the Army and the Air Force informed of all communications unless otherwise directed by the Secretary of Defense.

(6) Coordinate the sharing of State contingency plans for the use of non-federalized NG forces in CDO roles between the responsible State Adjutants General and the responsible Combatant Commander.

§ 182.6 Procedures.

(a) *Participation of DoD Personnel in Civilian Law Enforcement Activities*—(1) *Guiding Statutory Requirements and Supporting Policies*—(i) *Statutory Restrictions*. (A) The primary restriction on DoD participation in civilian law enforcement activities is the Posse Comitatus Act. It provides that whoever willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute U.S. laws, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, shall be fined under title 18, U.S.C., or imprisoned not more than 2 years, or both.

(B) 10 U.S.C. 375 provides that the Secretary of Defense shall prescribe such regulations as may be necessary to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under 10 U.S.C. chapter 18 does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participa-

tion in such activity by such member is otherwise authorized by law.

(ii) *Permissible Direct Assistance*. Categories of active participation in direct law-enforcement-type activities (e.g., search, seizure, and arrest) that are not restricted by law or DoD policy are: (A) Actions taken for the primary purpose of furthering a DoD or foreign affairs function of the United States, regardless of incidental benefits to civilian authorities. This does not include actions taken for the primary purpose of aiding civilian law enforcement officials or otherwise serving as a subterfuge to avoid the restrictions of the Posse Comitatus Act. Actions under this provision may include (depending on the nature of the DoD interest and the authority governing the specific action in question):

(1) Investigations and other actions related to enforcement of the Uniform Code of Military Justice (10 U.S.C. chapter 47).

(2) Investigations and other actions that are likely to result in administrative proceedings by the Department of Defense, regardless of whether there is a related civil or criminal proceeding. (See DoD Instruction 5525.07⁷ and the Memorandum of Agreement Between the Attorney General and the Secretary of Defense with respect to matters in which the Department of Defense and the Department of Justice both have an interest.)

(3) Investigations and other actions related to a commander's inherent authority to maintain law and order on a DoD installation or facility.

(4) Protection of classified defense information or equipment or controlled unclassified information (e.g., trade secrets and other proprietary information), the unauthorized disclosure of which is prohibited by law.

(5) Protection of DoD personnel, equipment, and official guests.

(6) Such other actions that are undertaken primarily for a military or foreign affairs purpose.

(B) Audits and investigations conducted by, under the direction of, or at the request of the IG, DoD, pursuant to

⁷ Available at <http://www.dtic.mil/whs/directives/corres/pdf/552507p.pdf>.